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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CARRIE COUSER, on behalf of herself)	Case No.
and all others similarly situated,)
) <u>CLASS ACTION</u>
Plaintiff,)
) COMPLAINT FOR VIOLATIONS
vs.) OF:
)
RIGHTIME HOME SERVICES, INC.,) 1. VIOLATIONS OF
) ELECTRONIC FUNDS
) TRANSFER ACT [15 U.S.C.
Defendants.) §1693 ET SEQ.]
)
) <u>DEMAND FOR JURY TRIAL</u>
)

Plaintiff CARRIE COUSER (“Plaintiff”), on behalf of herself and all others similarly situated, alleges the following against Defendant RIGHTIME HOME SERVICES, INC. upon information and belief based upon personal knowledge:

INTRODUCTION

1. Plaintiff’s Class Action Complaint is brought pursuant to the

1 Electronic Funds Transfer Act, 15 U.S.C. 1693 et seq. (“EFTA”).

2 2. Plaintiff, individually, and on behalf of all others similarly situated,
3 brings this Complaint for damages, injunctive relief, and any other available legal
4 or equitable remedies, resulting from the illegal actions of Defendants debiting
5 Plaintiff’s and also the putative Class members’ bank accounts on a recurring
6 basis without obtaining a written authorization signed or similarly authenticated
7 for preauthorized electronic fund transfers from Plaintiff’s and also the putative
8 Class members’ accounts, thereby violating Section 907(a) of the EFTA, 15
9 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).
10 Plaintiff alleges as follows upon personal knowledge as to herself and her own
11 acts and experiences, and, as to all other matters, upon information and belief,
12 including investigation conducted by her attorneys.

13
14 **JURISDICTION AND VENUE**

15 3. This Court has jurisdiction under 28 U.S.C. 1331, because this action
16 is brought pursuant to the EFTA, 15 U.S.C. 1693 *et seq.*

17 4. Jurisdiction of this Court arises pursuant to 15 U.S.C. 1693(m),
18 which states that, “without regard to the amount in controversy, any action under
19 this section may be brought in any United States district court.”

20 5. Venue and personal jurisdiction in this District are proper pursuant to
21 28 U.S.C. 1391(b) because Plaintiff resides within this District and Defendants do
22 or transact business within this District, and a material portion of the events at
23 issue occurred in this District.

24 **PARTIES**

25 6. Plaintiff, CARRIE COUSER (“PLAINTIFF”), is a natural person
26 residing in Riverside County in the state of California, and is a “consumer” as
27 defined by the EFTA, 15 U.S.C. §1693a(6).

28 7. At all relevant times herein, DEFENDANT, Righttime Home

1 Services, Inc. (“DEFENDANT”), was a company engaged in the business of
2 installing and repairing air conditioning, heating, plumbing and electrical
3 systems.

4 8. Defendant has acted through its agents, employees, officers,
5 members, directors, heirs, successors, assigns, principals, trustees, sureties,
6 subrogees, representatives, and insurers.

7 **FACTUAL ALLEGATIONS**

8 9. On or around May 30, 2015, Defendant began withdrawing \$24.95
9 on a monthly automatic recurring business.

10 10. Without written permission from Plaintiff, Defendant withdrew
11 money from Plaintiff’s account multiple times.

12 11. Plaintiff never provided Defendant with any written authorization to
13 deduct any sums of money on a regular recurring basis from Plaintiff’s banking
14 account.

15 12. Further, Defendant did not provide to Plaintiff, nor did Plaintiff
16 execute, any written or electronic writing memorializing or authorizing the
17 payments.

18 13. Plaintiff did not provide Defendant either with a written or an
19 electronic signature authorizing the payments.

20 14. Plaintiff alleges such activity to be in violation of the Electronic
21 Funds Transfer Act, 15 U.S.C. 1693 et seq. (“EFTA”), and its surrounding
22 regulations, including, but not limited to, 12 C.F.R. §§1005.7, 1005.8, and
23 1005.9.

24 **CLASS ACTION ALLEGATIONS**

25 15. Plaintiff brings this action on behalf of herself and all others
26 similarly situated, as a member of the proposed class (hereafter “The Class”)
27 defined as follows:
28

1 All persons in the United States whose bank accounts
2 were debited on a reoccurring basis by Defendant
3 without Defendant obtaining a written authorization
4 signed or similarly authenticated for preauthorized
5 electronic fund transfers within the one year prior to the
6 filing of this Complaint.

7 16. Plaintiff represents, and is a member of, The Class, consisting of all
8 persons within the United States whose bank account was debited on a recurring
9 basis by Defendant without Defendant obtaining a written authorization signed or
10 similarly authenticated for preauthorized electronic fund transfers within the one
11 year prior to the filing of this Complaint.

12 17. Defendant, their employees and agents are excluded from The Class.
13 Plaintiffs do not know the number of members in The Class, but believe the Class
14 members number in the hundreds, if not more. Thus, this matter should be
15 certified as a Class Action to assist in the expeditious litigation of the matter.

16 18. The Class is so numerous that the individual joinder of all of its
17 members is impractical. While the exact number and identities of The Class
18 members are unknown to Plaintiff at this time and can only be ascertained
19 through appropriate discovery, Plaintiff is informed and believes and thereon
20 alleges that The Class includes hundreds, if not thousands, of members. Plaintiff
21 alleges that The Class members may be ascertained by the records maintained by
22 Defendant.

23 19. This suit is properly maintainable as a class action pursuant to Fed.
24 R. Civ. P. 23(a) because the Class is so numerous that joinder of the Class
25 members is impractical and the disposition of their claims in the class action will
26 provide substantial benefits both to the parties and to the Court.

27 20. There are questions of law and fact common to the Class affecting
28 the parties to be represented. The questions of law and fact to the Class

1 predominate over questions which may affect individual Class members and
2 include, but are not necessarily limited to, the following:

3 a. The members of the Class were not provided with, nor did they
4 execute, written agreements memorializing automatic or recurring electronic
5 payments.

6 b. Defendant did not request, nor did it provide, Class members with
7 written agreements memorializing the automatic or recurring electronic
8 payments.

9 c. The members of the Class did not provide either a written (“wet”) or
10 otherwise electronic signature authorizing the automatic or recurring electronic
11 payments.

12 d. Despite not providing written or electronic authorization for
13 payments to be drawn from their accounts, Defendant took unauthorized
14 payments from Class members’ accounts.

15 21. As someone whose bank account was debited by Defendant without
16 Defendant obtaining a written authorization signed or similarly authenticated for
17 preauthorized electronic fund transfers, Plaintiff is asserting claims that are
18 typical of The Class.
19

20 22. Plaintiff will fairly and adequately protect the interests of the
21 members of The Class. Plaintiff has retained attorneys experienced in the
22 prosecution of class actions.

23 23. A class action is superior to other available methods of fair and
24 efficient adjudication of this controversy, since individual litigation of the claims
25 of all Class members is impracticable. Even if every Class member could afford
26 individual litigation, the court system could not. It would be unduly burdensome
27 to the courts in which individual litigation of numerous issues would proceed.
28 Individualized litigation would also present the potential for varying, inconsistent,

1 or contradictory judgments and would magnify the delay and expense to all
2 parties and to the court system resulting from multiple trials of the same complex
3 factual issues. By contrast, the conduct of this action as a class action presents
4 fewer management difficulties, conserves the resources of the parties and of the
5 court system, and protects the rights of each Class member.

6 24. The prosecution of separate actions by individual Class members
7 would create a risk of adjudications with respect to them that would, as a practical
8 matter, be dispositive of the interests of the other Class members not parties to
9 such adjudications or that would substantially impair or impede the ability of such
10 non-party Class members to protect their interests.

11 25. Defendant has acted or refused to act in respects generally applicable
12 to The Class, thereby making appropriate final and injunctive relief with regard to
13 the members of the Class as a whole.

14 26. Defendant failed to comply with the writing and notice requirements
15 of § 907(a) of the EFTA, 15 U.S.C. § 1693e(a) as to the Class members with
16 respect to the above alleged transactions.

17 27. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a
18 “preauthorized electronic fund transfer from a consumer’s account may be
19 authorized by the consumer only in writing, and a copy of such authorization
20 shall be provided to the consumer when made.”

21 28. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the
22 term “preauthorized electronic fund transfer” means “an electronic fund transfer
23 authorized in advance to recur at substantially regular intervals.”

24 29. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides
25 that “[p]reauthorized electronic fund transfers from a consumer’s account may be
26 authorized only by a writing signed or similarly authenticated by the consumer.
27 The person that obtains the authorization shall provide a copy to the consumer.”
28

1 30. Section 205.10(b) of the Federal Reserve Board's Official Staff
2 Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that “[t]he
3 authorization process should evidence the consumer’s identity and assent to the
4 authorization.” *Id.* at ¶10(b), comment 5. The Official Staff Commentary further
5 provides that “[a]n authorization is valid if it is readily identifiable as such and
6 the terms of the preauthorized transfer are clear and readily understandable.” *Id.*
7 at ¶10(b), comment 6.

8 31. In multiple instances, Defendants debited bank accounts of the Class
9 members on a recurring basis without obtaining a written authorization signed or
10 similarly authenticated by the respective Class members for preauthorized
11 electronic fund transfers from the accounts of the respective Class members,
12 thereby violating § 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section
13 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

14 32. In multiple instances, Defendants debited Class members’ bank
15 accounts on a recurring basis without providing a copy of a written authorization
16 signed or similarly authenticated by the respective Class members for
17 preauthorized electronic funds transfers, thereby violating Section 907(a) of the
18 EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. §
19 205.10(b).

20 33. Pursuant to Fed. R. Civ. P. 23, a class action is appropriate and
21 preferable because, on information and belief, the putative class consists of
22 hundreds, if not thousands, of individuals and is so numerous that joinder of all
23 putative class members, whether otherwise required or permitted, is
24 impracticable. The actual number of putative class members is in the exclusive
25 control of Defendant.

26 34. Pursuant to Fed. R. Civ. P. 23, a class action is appropriate and
27 preferable, because Plaintiff will fairly and adequately protect the interests of the
28

1 Class and Plaintiff has hired counsel able and experienced in class action
2 litigation.

3 35. Pursuant to Fed. R. Civ. P. 23(b)(3), class certification is appropriate
4 because this Court and the parties would enjoy economies in litigating common
5 issues on a class-wide basis instead of a repetitive individual basis.

6 36. Pursuant to Fed. R. Civ. P. 23(b)(3), class certification is appropriate
7 because the size of each putative class member's actual damages is too small to
8 make individual litigation an economically viable option.

9 37. Pursuant to Fed. R. Civ. P. 23(b)(3), class certification is appropriate
10 because no unusual difficulties will likely occur in the management of the Class
11 as all questions of law or fact to be litigated at the liability stage are common to
12 the putative class and all compensatory relief is concomitant with a liability
13 finding and can be calculated by automated and objective means.

14 38. The size and definition of the Class can be identified through
15 Defendant's records and/or Defendant's agents' records.
16

17
18 **COUNT I:**
19 **DEFENDANT VIOLATED THE ELECTRONIC FUNDS TRANSFER**
20 **ACT**
21 **(On Behalf of Plaintiff and the Class)**

22 39. Plaintiff incorporates and makes reference to everything above as if
23 it were fully stated here.

24 40. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a
25 "preauthorized electronic fund transfer from a consumer's account may be
26 authorized by the consumer only in writing, and a copy of such authorization
27 shall be provided to the consumer when made."

28 41. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the
term "preauthorized electronic fund transfer" means "an electronic fund transfer

1 authorized in advance to recur at substantially regular intervals.”

2 42. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides
3 that “[p]reauthorized electronic fund transfers from a consumer’s account may be
4 authorized only by a writing signed or similarly authenticated by the consumer.
5 The person that obtains the authorization shall provide a copy to the consumer.”

6 43. Section 205.10(b) of the Federal Reserve Board's Official Staff
7 Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that “[t]he
8 authorization process should evidence the consumer’s identity and assent to the
9 authorization.” *Id.* at ¶10(b), comment 5. The Official Staff Commentary further
10 provides that “[a]n authorization is valid if it is readily identifiable as such and
11 the terms of the preauthorized transfer are clear and readily understandable.” *Id.*
12 at ¶10(b), comment 6.

13 44. In multiple instances, Defendant has debited Plaintiff’s and also the
14 putative Class members’ bank accounts on a recurring basis without obtaining a
15 written authorization signed or similarly authenticated for preauthorized
16 electronic fund transfers from Plaintiff’s and also the putative Class members’
17 accounts, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a),
18 and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

19 45. In multiple instances, Defendants have debited Plaintiff’s and also
20 the putative Class members’ bank accounts on a recurring basis without providing
21 a copy of a written authorization signed or similarly authenticated by Plaintiff or
22 the putative Class members for preauthorized electronic fund transfers, thereby
23 violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section
24 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, CARRIE COUSER, individually, and on behalf of all others similarly situated, respectfully requests judgment be entered against Defendant, RIGHTIME HOME SERVICES, INC., for the following:

46. That this action be certified as a class action on behalf of The Class and Plaintiff be appointed as the representative of The Class;

47. Statutory damages of \$1,000.00, per Class Member, pursuant to the Electronic Fund Transfer Act, §916(a)(2)(A);

48. Actual damages;

49. Costs and reasonable attorneys' fees pursuant to the Electronic Fund Transfer Act, §916(a)(3);

50. For prejudgment interest at the legal rate; and

51. Any other relief this Honorable Court deems appropriate.

TRIAL BY JURY

52. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted this 26th day of August, 2015.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff